IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CLINT DIDIER, MATTHEW MORELL, KEVIN HEINEN, JOHN LOGUE, and PARKER OLSEN, Petitioners, v. KING COUNTY SUPERIOR COURT, Respondent.	No. 97924-3 RULING DISMISSING ORIGINAL ACTION AGAINST STATE OFFICER

Petitioners Clint Didier, Matthew Morell, Kevin Heinen, John Logue, and Parker Olsen, claiming taxpayer standing and invoking this court's original jurisdiction under article IV, section 4 of the Washington Constitution, seek issuance of a writ of mandamus directing the King County Superior Court to reverse a preliminary injunction entered by a judge of that court or to transfer venue to this court. This original action is dismissed for reasons explained below.

This matter concerns Initiative I-976, a measure approved by a majority of Washington State voters in the November 2019 election. The initiative is controversial in that it will give motor vehicle owners the benefit of $30 car tab fees while also resulting in a loss of revenue that will severely affect public transportation and transportation infrastructure throughout the state.

After it became apparent that I-976 mustered enough votes to pass, a coalition of plaintiffs consisting of Garfield County Transportation Authority, King County, City of Seattle, Washington State Transit Association, Association of Washington Cities, Port of Seattle, Intercity Transit, Amalgamated Transit Union Legislative Council of Washington, and Michael Rogers, filed an action in King County Superior Court for a preliminary injunction. Plaintiffs argue that I-976 is unconstitutional on multiple grounds.

On November 27, 2019, the day before Thanksgiving, the superior court entered an order granting plaintiff's motion for a preliminary injunction. In particular, the court reasoned that plaintiffs were likely to prevail on their argument that I-976 violates the "subject-in-title" rule articulated in article II, section 19 of the Washington Constitution. The preliminary injunction prevents I-976 from going into effect as scheduled on December 5, 2019.

Late in the afternoon on Monday, December 2, 2019, the attorney general filed an emergency motion for a stay of the superior court's order. Plaintiffs oppose the motion. The court will consider the emergency motion at its regularly scheduled en banc conference on December 4, 2019. *Garfield County Transportation Authority, et al. v. State*, No. 97914-6.[1] On December 3, 2019, petitioners filed the instant original action for a writ of mandamus, naming as defendant the King County Superior Court, and served it personally on the presiding judge of that court. Now before me for determination is whether to retain the action for a decision by this court, transfer it to the superior court, or dismiss it. RAP 16.2(d).

This original action is fatally flawed for three reasons.[2] First, this court's original action extends to a mandamus petition filed against *a state officer*. CONST.

1 The attorney general also filed a notice for discretionary review of the superior court's order, which will be considered in due course. RAP 2.3(a); RAP 5.1(a).

2 This original action is so plainly defective that is unnecessary to call for the respondent to file an answer. *See* RAP 17.4(c)(1).

art. IV, § 4; RAP 16.2(a). The King County Superior Court is a component of Washington's judicial system. It is an institution, not a state officer. Furthermore, petitioners did not name as defendants either the superior court judge who issued the preliminary injunction or the presiding judge of that court. *See State ex rel. Edelstein v. Foley*, 6 Wn.2d 444, 448, 107 P.2d 901 (1940) (superior court judges are state officers for purposes of original action filed pursuant to article IV, section 4). Petitioners cite no authority, and there appears to be none, supporting the proposition that this court has original jurisdiction in mandamus over an institution, such as a lower court of this state. This original action can be dismissed on this basis alone.

Aside from this jurisdictional defect, and assuming (without deciding) that the petition is directed against the presiding judge of the superior court, mandamus is an extraordinary remedy. *SEIU Healthcare 775NW v. Gregoire*, 168 Wn.2d 593, 598, 229 P.3d 774 (2010). Mandamus will lie only to compel a state officer to perform a mandatory duty. *Id*. at 599. A mandatory duty for purposes of a mandamus action is one that is ministerial or nondiscretionary in nature, not one that involves the exercise of discretion or judgment. *Id*.

Petitioners here fail to identify a mandatory duty actionable in mandamus. They seek to have the superior court, or the presiding judge of that court, reverse the order granting the motion for a preliminary injunction or change venue to this court. For this purpose, petitioners raise multiple grounds for attacking the propriety of the superior court's order, such as the plaintiffs' lack of standing and the appearance of fairness doctrine. There is no need to analyze these arguments here because petitioners cite no authority requiring the court or the presiding judge to overturn an order by another judge of that court or to change venue at the request of a nonparty as a matter of ministerial or nondiscretionary duty. There is no apparent court rule or constitutional provision mandating removal of a superior court case to this court, and the proper means for challenging a superior court order is by way of an appeal or motion for

discretionary review filed by an aggrieved party. RAP 2.1(a); RAP 2.3(a). Petitioners here are not parties to the underlying action for a preliminary injunction, and they cite no authority (and there appears to be none) authorizing mandamus as a nonparty alternative to an appeal or motion for discretionary review of a superior court order or as a means of forcing a change of venue. And any judicial decision as to the validity of the superior court's order or the proper venue for the action will entail some degree of judgment and discretion. Mandamus cannot be used for these purposes.

Furthermore, petitioners seeking a writ of mandamus must establish that they have no other plain, speedy, and adequate remedy at law. *Staples v. Benton County*, 151 Wn.2d 460, 464, 89 P.3d 706 (2004); RCW 7.16.170. This a fact-specific requirement that may be satisfied if petitioners show that the nature of the action makes it apparent that their rights will not be protected or that they will not obtain relief absent issuance of a writ. *State ex rel. O'Brien v. Police Court of the City of Seattle*, 14 Wn.2d 340, 347-48, 128 P.2d 332 (1942). Mere delay, expense, annoyance, or even some hardship involved in pursuing the usual remedy will not necessarily make that remedy inadequate. *Id*.

In this instance, the attorney general has already filed an emergency motion for a stay of the superior court's order, which this court is now considering, and a notice for discretionary review, which will be considered in due course. By means of this litigation in the superior court and this court the attorney general represents petitioners' interests as taxpayers by defending the constitutional validity of the initiative. *See* RCW 43.10.030(1)-(3), .110 (listing attorney general's duties). Even if this court denies the emergency motion for a stay, the attorney general has already indicated he will seek appellate review of the superior court's order. Petitioners' apparent unhappiness with the attorney general's strategic approach in litigating the constitutionality of I-976 does not mean that they are without a plain, speedy, and adequate remedy. The already existing litigation affords them such a remedy.

For the foregoing reasons, petitioners fail to make a colorable argument that they are entitled to mandamus relief. There is no justification for retaining this petition for a writ of mandamus in this court for a decision on the merits. RAP 16.2(d).

The original action is dismissed.[3]

COMMISSIONER

December 4, 2019

3 As a result of this ruling, petitioners' motion for an expedited hearing is denied as moot.